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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/633,450	07/31/2003	Robert D. Harty	0116/00921	4683	
27197 CHERSKOV &	7590 03/26/2001 & FLAYNIK		EXAMINER		
THE CIVIC O	THE CIVIC OPERA BUILDING			LEWIS, KIM M	
20 NORTH WA	WACKER DRIVE, SUITE 1447 IL 60606 ART UNIT PAPER NUI		PAPER NUMBER		
,			3772		
SHORTENED STATUTOR	Y PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MO	NTHS	03/26/2007	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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	Application No.	Applicant(s)	., .,
	10/633,450	HARTY, ROBERT D.	
Office Action Summary	Examiner	Art Unit	
	Kim M. Lewis	3772	
The MAILING DATE of this communication apperiod for Reply	pears on the cover sheet with the o	correspondence address	
A SHORTENED STATUTORY PERIOD FOR REPL WHICHEVER IS LONGER, FROM THE MAILING D - Extensions of time may be available under the provisions of 37 CFR 1.1 after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory period - Failure to reply within the set or extended period for reply will, by statute Any reply received by the Office later than three months after the mailin earned patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICATION 136(a). In no event, however, may a reply be tirwill apply and will expire SIX (6) MONTHS from e, cause the application to become ABANDONE	N. nely filed the mailing date of this communication. (C) (35 U.S.C. § 133).	
Status			
Responsive to communication(s) filed on 2a) ☐ This action is FINAL. 2b) ☑ This 3) ☐ Since this application is in condition for alloware closed in accordance with the practice under the process.	s action is non-final. ince except for formal matters, pro		
Disposition of Claims			
4) ☐ Claim(s) 1-20 is/are pending in the application 4a) Of the above claim(s) is/are withdra 5) ☒ Claim(s) 19 and 20 is/are allowed. 6) ☒ Claim(s) 1,4,5,7,10,11 and 15 is/are rejected. 7) ☒ Claim(s) 2,3,6,8,9,12-14, 16,17 and 18 is/are 8) ☐ Claim(s) are subject to restriction and/or	wn from consideration. objected to.		
Application Papers			
9)☐ The specification is objected to by the Examine	er.		
10)☐ The drawing(s) filed on is/are: a)☐ acc	cepted or b) objected to by the	Examiner.	
Applicant may not request that any objection to the			
Replacement drawing sheet(s) including the correct 11) The oath or declaration is objected to by the Ex	, , , , , , , , , , , , , , , , , , , ,).
Priority under 35 U.S.C. § 119	rammer. Note the attached office	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	
12) Acknowledgment is made of a claim for foreign a) All b) Some * c) None of: 1. Certified copies of the priority document 2. Certified copies of the priority document 3. Copies of the certified copies of the priority application from the International Burea * See the attached detailed Office action for a list	ts have been received. ts have been received in Applicat brity documents have been receive u (PCT Rule 17.2(a)).	ion No ed in this National Stage	
Attachment(s) 1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date	4) Interview Summary Paper No(s)/Mail D 5) Notice of Informal F 6) Other: <u>Detailed Act</u>	ate Patent Application	

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DETAILED ACTION

Claim Objections

1. Claims 11 and 19 are objected to because of the following informalities:

Claim 11, line 1, "extends" should read --adapted to extend--,

Claim 19, line 3, "extends" should read --adapted to extend--.;

Claim 19, line 5, "extending" should read --adapted to extend--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- 2. Claims 1, 4 and 10-11, 15 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,054,475 ("Calabrese et al.").

As regards claim 1, Calabrese et al. disclose a medical collar that anticipates applicant's invention. The collar immobilizes the head, neck and upper torso of a patient, and as can be seen from marked-up Fig. 1, comprises a first substrate for supporting the back of the patient's head; a second substrate in communication with the first substrate, whereby the second substrate is adapted to encircle the patient's neck;

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and a third substrate in communication with the second substrate, whereby the third substrate contacts the patient's chest.

As regards claim 4, note apertures adjacent member (22) as shown in Fig. 3.

As regards claims 10-11, the patient's ears, as seen in Fig. 4 are capable of being visualized during use of the collar and the third substrate is capable of extending at least as low as the patient's second rib.

As regards claim 15, note padding material (18).

3. Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,205,813 ("Schmidt").

As regard claim 1, Schmidt discloses a support device that immobilizes the head, neck and upper torso of a patient, and as can be seen from marked-up Figs. 24 and 25, comprises a first substrate for supporting the back of the patient's head; a second substrate in communication with the first substrate, whereby the second substrate is adapted to encircle the patient's neck; and a third substrate in communication with the second substrate, whereby the third substrate contacts the patient's chest.

As regards claim 5, the device of Schmidt is integrally molded.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

- 5. The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
 - 1. Determining the scope and contents of the prior art.
 - 2. Ascertaining the differences between the prior art and the claims at issue.
 - 3. Resolving the level of ordinary skill in the pertinent art.
 - 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
- 6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt.

As regards claim 7, Schmidt fails to teach a transparent device. However, it has been held that the selection of a known material based upon its suitability for the intended use is a design consideration. Thus, it would have been obvious to one having ordinary skill in the art to select a moldable transparent material depending upon the intended use.

Allowable Subject Matter

- 7. Claims 2, 3, 6, 8, 9, 12-14 and 16-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
- 8. Claims 19-20 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is (571) 272-

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4796. The examiner can normally be reached on Monday to Friday, from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco, can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kim M. Lewis Primary Examiner Art Unit 3772

kml

March 19, 2007

U.S. Patent



